

# Posthumous Sperm Use in Times of War: Ethics, Law and Society

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**Abstract:** This article delves into the legal developments, bioethical nuances, and societal perspectives surrounding posthumous sperm use, particularly in the context of soldiers falling during their service. It analyzes the Israeli example during The Swords of Iron War, where the bioethical dilemma is decided based on national solidarity, beyond the “clean” bioethical-legal discussion.

## Background

Yahav Winner, ShayLee Atari's husband, left the safety room at Kfar Aza to protect his wife and one-month-old baby Shia during the attack on October 7, 2023. When ShayLee and her daughter were rescued after 27 hours, Yahav's fate was still unknown.<sup>1</sup> A few days after ShayLee learned about her husband's death, she was determined to retrieve his sperm so she could bring little Shia a brother or sister, as they had planned. Since many of the bodies retrieved from Kfar Aza were unrecognizable due to the atrocities, by the time Yahav's body was identified and released for burial, it had remained in the heat for too long, and

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the sperm was no longer retrievable. The dream, in its original form, was shattered.<sup>2</sup>

ShayLee is not alone. On the night of October 7, the parents of three young men, close friends, murdered by Hamas at the Nova Music Festival for Peace, arrived at the hospital, asking to perform sperm retrieval. The doctors explained to the family that a court order was required, and it was obtained 2 hours later.<sup>3</sup> Data provided by the Israeli Ministry of Health indicated that since October 7, sperm from 110 soldiers and 10 civilians, young men killed at the Nova Music Festival for Peace, has been frozen. 82 of the requests to preserve the sperm of their deceased loved ones came from family members, primarily parents, with 28 of them submitted by spouses.<sup>4</sup> 42 requests were made in the first week of the war.<sup>5</sup> The number rose daily.<sup>6</sup>

The Swords of Iron War added new challenges to the general emergency associated with the procedure of posthumous sperm preservation. Sperm retrieval should be done, ideally, 12–24 hours after death.<sup>7</sup> In the days following the October 7 attack, hundreds of bodies were found lying outside hours and even days after death, leaving a short window of time for retrieval. Due to the time sensitivity, the attorney general has facilitated the process by temporarily waiving the requirement for parents to obtain a family court order and offering sperm preservation when parents are notified of their son's death.<sup>8</sup> The Health Ministry order waiving court approval has been extended several times and is now in force as long as there is a war, provided that hospitals believe that seeking a court approval may make it impossible to retrieve sperm given the amount of time that has lapsed since the deceased's passing, with the exception of situations in which the deceased's spouse or any other family mem-

ber objects to the posthumous sperm retrieval or if the parents disagree.<sup>9</sup>

## I. Tensions Between the Living and the Dead

### A. Socio-Ethical Tensions

Ethical assessment of bereavement processes varies based on both cultural and individual factors of bereavement. “Classical” bereavement literature, inspired mainly by Freud, maintains that the bereaved needs to disengage from the deceased, while contemporary theories of bereavement see grieving as a dynamic, active, and continuous process of adaptation and reorganization of self.<sup>10</sup> According to classical views of bereavement, the technological practice

determination about one desirable way of bereavement seems to be presumptuous and moralistic.

Questions may arise regarding the impacts on posthumously conceived offspring, deliberately born into a situation where they will never know their father and will forever serve as silent evidence of the tragedy, a living monument of the deceased. Wardi calls them “memorial candles,” a term that implies that the children could be expected to fill a void left by their deceased parent.<sup>16</sup> Landau coined the term “planned orphanhood” to highlight the concern that this practice may impose a “social label,” and might have negative implications on the child’s best interests.<sup>17</sup> For example, a view that children have the right to have

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of procreation after death prevents the possibility of accepting death as it is.<sup>11</sup> Posthumous sperm use might have negative psychological, emotional, and social implications on the living. Allegedly, coping with the pain of the loss through “substituting” the deceased in a genetic continuation, such as parenting a child posthumously using his sperm, casts aside the existence of death.<sup>12</sup> The modern theory of grief sees the continuing bonds between the bereaved and the deceased person as a vital part of successful rehabilitation, which carries with it the promise of healing the immense pain.<sup>13</sup> This understanding of the grieving process suggests that the decision to bring a child into the world goes beyond a futile desire to hold on to the memory of the dead by using a future child as a memorial, substitution, or genetic continuity.<sup>14</sup> Instead, it can honor their perceived commitment to the deceased, restate a previous relationship with the deceased and redefine dynamics within the remaining family members by filling the void with optimism, affection, and continuity — a kind of victory over loss and death.<sup>15</sup> The care for the newborn gives a new meaning to grief that that nurtures the spouse and parents’ own identities and capabilities through their roles as parents/grandparents, thereby regarding the child as inherently valuable. Between these two views of bereavement, any

two living parents assumes that a given death of the biological father would have a crucial impact on the child’s well-being. “An adult’s desire to give birth to an orphan should not have priority over the child’s basic right to two living parents, at least at the time of its conception.”<sup>18</sup> This approach assumes that the child born would be raised by one parent; however, even if born from a deceased person’s sperm, a child could still be raised by two parents, albeit not by the biological father, and vice versa — a child to a living parent can become an orphan. Since the child is unborn at the time of decision, the obligation towards them is unclear. The uncertainty of the harm and the concept that the child is better born than not reduce the negative impact attributed to children’s best interests, making the argument of harms to the child’s interests debatable, to say the least.

Bereavement interests may or may not conflict with the deceased’s wishes, potentially raising additional tensions. The choice to become a parent or to create a family unit through posthumous gamete retrieval could be seen either as the wish of the surviving partner or family members to maintain a biological connection to the deceased (regardless to the deceased’s pre-death wishes), or as an extension of the deceased’s reproductive autonomy expressed pre-death. Most countries prohibit the use of posthumous sperm for

procreation altogether or restrict it only to cases of pre-death explicit consent for posthumous sperm retrieval through advance directives or actions taken. Ethically, if there is an indication of specific objections by the deceased to use the sperm posthumously, disrespecting his wishes violates his dignity. Without a clear indication of the deceased's will, ethical concerns may emerge surrounding the accurate determination of their reproductive intentions, potentially relying on false assumptions. What false assumption might result in greater injustice: that he would have consented to the use of his sperm to create an orphan, or that he would rather prefer not to have continuity if he cannot take an active part in the child's life? Does "parenthood" mean having genetic continuity, or is it founded on active relationships and practical parenting experience between the parent and the child? The answer may depend on different views regarding parenthood and continuity.

### *B. The Jewish Perspectives on Death and Continuity*

Jewish viewpoints on continuity are based on different interpretations of death's significances — whether death marks life's ultimate finality or a physical phenomenon with emphasis on commemoration and genetic continuity.<sup>19</sup> Fertilization after death is in accordance with the will of the Torah and perceived as grace for the deceased (Leviticus 20:21; Jeremiah 22:3; Genesis 30:1, King James Version). Rabbi Dr. Halperin, a former chief officer of medical ethics for the Israeli Ministry of Health, draws parallels to Jewish scripts' emphasis on leaving a name and a trace after death.<sup>20</sup> Judaism sees great value in leaving a memory for the deceased, while the tragedy of death without a memory is considered a curse. This emphasis is exemplified by the practice of levirate marriage (Yibbum) that, albeit no longer in use today in the general population, requires an unmarried man to marry his dead brother's widow to procreate with her and pass on his brother's name, "to leave a name and remembrance."<sup>21</sup> According to this permissive stance, fulfilling the deceased's wish for continuity is deemed a religious imperative (mitzvah) unless there are compelling reasons to forbid it.

In contrast, Rabbi Sharlo presents a view grounded in the finality of human life, contending that it is inadvisable to leave "residues" after death. Using a person's sperm solely for the purpose of perpetuating him, when he expressed no desire for this while alive, seems to indicate that sperm is nothing more than a technical resource and means for the use of humans.<sup>22</sup> He questions the ethical implications of birthing a child who may face disadvantages due to the fact of being

an orphan at birth, be exposed to potential conflicts between the widow and the deceased's parents, or require resources that a single mother may find challenging to obtain.

Rabbi Katz represents the Puah Institute, which bridges the gap between cutting-edge fertility treatment and orthodox Jewish law. Rabbi Katz's position attempts to reconcile the tension between respect for the deceased's wishes and concerns for the living's well-being. He suggests that the religious injunction to "be fruitful and multiply" applies solely to the living, as the deceased are not bound by religious obligations. Therefore, without explicit consent for posthumous sperm use, extracting sperm from the deceased would be prohibited. Additionally, he advises against a widow conceiving a child from her deceased husband posthumously to facilitate her grieving process and reduce sorrow.<sup>23</sup>

## **II. Policy Developments**

Israel's reproductive policy is known for promoting birth and reproductive practices and is deeply rooted in historical, religious, and modern liberal political, cultural, and social references.<sup>24</sup> In particular, four intersecting attributes of (in)fertility shape Israeli reproductive policy.<sup>25</sup> The first is a traditional *pro-family* discourse leading towards a convention of giving birth to at least two children. The second is a *genetic-based* discourse that compels genetic parenthood. The third can be considered a *collective national* discourse propelled by a sense of political and demographic threats to Israel related to the Jewish-Arab conflict and the memory of the six million annihilated Jews in the Holocaust. Finally, a *liberal* discourse assumes a right to happiness via the experience of parenthood and the realization of one's self, reaffirming the liberal assumption of a right to happiness via the experience of parenthood. The amalgamated effect of these policies makes the Israeli state a fertility superpower known for promoting birth and reproductive practices.<sup>26</sup>

Posthumous use of sperm is yet another component of Israel's pro-family narrative and wide acceptance of natalist practices. It supports most of the components of this constitutive narrative, reiterating the importance of genetics and family continuation. The context of a terroristic attack aligns with a sense of political and demographic threats by encouraging future child-birth. In the name of this narrative, technology is being recruited as a national goal, reflecting and reinforcing existing needs.

Since there is an interplay between the socio-political understanding and legal requirements surround-

ing the use of posthumous sperm for procreation, regulation must address a few tensions: questions about the deceased's explicit wishes, how to trace such a will, who or what represents it; who has a legal standing to ask for the use of sperm (whether only a partner or parents as well); what to do in case opinions of the partner and the parents conflict; and who will be considered the parents of the child.

*A. Defining Representation, Interpreting Deceased Wishes, and Determining Parenthood — Up to 2023*

A universal and obligatory enlistment policy in Israel mandates that every 18-year-old — be they Jewish or Druze, male or female (with exceptions for those medically unfit, Arabs, and ultra-Orthodox Jews) — serve either 2 (for women) or 3 (for men) years in the Israeli Defense Forces (IDF).<sup>27</sup> Since military service is mandatory and young men falling in the fight is, unfortunately, not rare, requests to use deceased sperm for procreation have been traditionally discussed in the context of soldiers, and are not a new thing in Israel. Compatibly, the leaders of the public struggle for the law were often bereaved parents of male soldiers killed in the army and not parents who lost their sons in civilian circumstances. Nevertheless, up until now most cases that arrived at the court did not address military-related deaths.<sup>28</sup>

The legal roots of the process are in the proposal to amend the Law on Families of Soldiers Who Died in the War (Compensation and Rehabilitation, 1950), intended to apply in a military context only to soldiers.<sup>29</sup> In 2002, The New Family Organization, which promotes the rights of diverse families, initiated a proposal for state-funded sperm freezing for military personnel, ensuring that soldiers could preserve their fertility before enlistment.<sup>30</sup> What set this proposal apart from previous initiatives was its bold expansion of reproductive rights beyond the soldiers and their partners to soldiers' parents, seeking to use their son's sperm with a woman unknown to him, should there be no designated partner. The proposal pushed the issue to the public discourse and faced significant opposition from the military following apprehensions regarding potential moral and psychological repercussions of the law for soldiers. Eventually, the proposal was not advanced due to the substantial financial burden associated with the implementation and maintenance of such a program.<sup>31</sup>

In 2003, the attorney general at the time, Eliakim Rubinstein, issued "Posthumous Sperm Retrieval and Use" directives.<sup>32</sup> The directives foreground the deceased's preferences. Therefore, when the deceased specifically requested that his sperm be used, fulfill-

ing his wish constitutes honoring the deceased's right to autonomy. Lacking a specific indication of the deceased's desire, judges cater to requests submitted by a permanent partner.<sup>33</sup> The spouse and no one other than her — including the parents of the deceased — has a legal standing regarding the intimate decisions about the use of sperm for her own fertilization. The partner, like ShayLee, represents the couple's familial plans to determine the use of posthumously retrieved sperm, based on the presumption that the deceased would have liked to procreate with his partner after his death.<sup>34</sup> There is no requirement to prove the deceased's wishes regarding what should be done with his cells after death. Effectively, unless a person leaves behind a "biological will" or explicit instructions *not* to use his sperm, the premise is that all deceased men who die unexpectedly are interested in the use of their sperm by their partner for procreation after their death.

The guidelines are legally binding for governmental medical centers and general attorneys, but not for the courts. Judges are free to ignore, but usually address the guidelines when asked to approve a request for the use of a deceased person's sperm. Since the end of the 1990s, Israeli courts have discussed cases in which widows or bereaved parents sought to use the sperm of a deceased person for fertilization.<sup>35</sup> Over the years, courts have consistently rejected parents' petitions claiming that parents would not have a right to decide on these matters had their son been alive, and that they do not have an absolute right to become grandparents.<sup>36</sup> Yet when the parents wanted and a widow did not wish to conceive from the sperm but did not object, the Supreme Court approved the parents' request to use their deceased son's sperm with another woman who would be the mother of the child to be born.<sup>37</sup>

Parents were required to provide significant indications of the deceased's wishes that their sperm would be used for procreation after his death; specifically, his desire to produce offspring, his desire for this to happen even after his death, and his desire for this to happen even with someone who is not his permanent partner.<sup>38</sup> The first such approved case initiated by parents was in 2009, providing a clear indication that the deceased, who died of cancer, wished to have children since he prematurely froze his sperm for procreation.<sup>39</sup> In other cases, indications relied on weaker evidence, such as statements, a letter, a personal diary, or testimonies of friends.<sup>40</sup> In 2022, the court authorized parents to use their son's sperm, relying on the testimony of the deceased's father that the soldier said he was interested in children.<sup>41</sup> The father reported



that his son told him, “Dad, whatever happens, and even if I die, make sure I have three children like you and mother.”<sup>42</sup> The court ruled that the father’s testimony must be trusted since the deceased’s will was expressed before a military activity from which he feared he would not return alive.

While the court has approved the use of sperm where the birth mother would raise the child, if the deceased’s parents wished to raise the child as their son, rulings seemed to try to cater to requests from parents, but most requests were overturned on appeal. In 2016, a court ruling that accepted a request by parents to use their deceased son’s sperm to bring a grandson into the world and raise him as their own — where the son’s partner did not wish to carry the pregnancy or raise the child herself but did not object to the grandparents using a surrogate — was appealed and subsequently overturned.<sup>43</sup> Similarly, in another case, the judge held that “the bereaved parents replace the wishes of the deceased with their personal wishes, pain and loss, while the deceased’s wish remains unknown.”<sup>44</sup> In 2022, the court’s decision allowing a sister to adopt her deceased brother’s offspring, born through egg donation and surrogacy, was overturned in an appeal.<sup>45</sup>

### *B. Presumed Consent and the 2023 Bill*

Cases of conflicts between the deceased’s partner and his parents raised a demand to acknowledge an independent legal standing of parents to use the sperm of their son. In May 2023, the Knesset (Israeli Parliament) approved, in a preliminary reading, a bill called “Using the sperm of a deceased person for procreation, 2023” (hereinafter “the bill”), which resolves the problem of tracing the deceased’s wishes, using the presumed consent model.<sup>46</sup> This decision means that if the deceased would *not* like his sperm to be used, he must express his autonomous wish during his lifetime. Lacking a specific indication of the deceased’s desire, it is presumed that the deceased would wish for his sperm to be used for procreation after his death. Presumed autonomy may challenge both the scope of the freedom to procreate — or the right to parenthood — and the meaning of the concept of “parenthood.”<sup>47</sup> Some critics argue that if parenthood is the realization of a practical choice, presumed wishes do not constitute the choice of parenthood unless the deceased left frozen gametes to be used in a specific family unit.<sup>48</sup> Others highlight empirical evidence that show tensions between presumed and actual will. According to Hashiloni-Dolev and Triger, there is a profound gap between the assumption underlying the legal policy, which views parenthood primarily

as a genetic connection, and findings from interviews with men on this issue. These findings reveal a range of perspectives, making it impossible to generalize or assume that all men would prefer to have genetic offspring after their death.<sup>49</sup> Some men wish that if they die their partner will start a family with another man, and, only if she fails to do so, use their sperm as a single mother; others express distaste for the very idea that their parents would have a woman they had never met in their lives give birth to a grandchild; and others are interested in it, or at least not opposed to the procedure. According to Hashiloni-Dolev and Triger’s series of studies, if anything, the default stance should be the opposite; that is, that most men’s desire is not to have a child after their death, unless it is essential to those they leave behind. They conclude that since the presumed will cannot be attributed to the active and social aspects of parenthood, such as rearing the children and caring for them, it serves as “a right to continuity,” i.e. the right to perpetuate the deceased’s genetic legacy, which fit the constitutive pro-family narrative in Israel.<sup>50</sup> Continuity will help the families of the deceased in the rehabilitation process but the dead cannot enjoy being a parent.

### **III. Military and War**

The bill applies to all deceased citizens, but it establishes an entire mechanism, unique for soldiers. Embedded within a sense of ongoing threat and the imperative to safeguard citizens and ensure national security, the Israeli army and mandatory service are cornerstone principles shaping Israeli society. Military service organizes the societal framework and integration processes. It molds social cohesion and cultivates a profound sense of belonging which reinforces a collective Israeli identity among individuals from diverse backgrounds. This shared experience profoundly influences Israeli culture by fostering unity and solidarity and shaping political dynamics.<sup>51</sup>

#### *A. Posthumous Sperm Use and Soldiers*

The new arrangement proposed in the 2023 bill imposes an obligation on the army to confirm whether each enlisted soldier consents to or prohibits the use of his sperm by a partner or the parents if he is killed during his military service (Article 23 (b)). It will require enlisted populations, who are largely teenagers at an early stage of their lives, to confront the question of their early death and potential posthumous paternity, and to consider these issues before their enlistment, while still minors. Many of these young men were never aware of the possibility of procreation after death, and not all have a committed relation-

ship when confronted with the question. Naturally, most have not expressed their desire to have offspring at this stage of their lives, let alone after their death (only about 10% of soldiers killed have expressed their wishes).<sup>52</sup> Their decision will be based on a printed information page, without ethical discussions or deliberation.<sup>53</sup> Hashiloni-Dolev and Triger report that the option to prohibit the use of sperm after a soldier's death is briefly mentioned in one line at the end of the form, directing the reader to consent to its use.<sup>54</sup> Such a design arguably makes posthumous procreation the default and the natural choice, and they predict consent will become socially expected. They raise a concern that any choice to deviate from the social expectation to have children at any cost might result in social criticism. While the bill provides this opportunity to soldiers, men who do not serve in the army (approximately half of Israeli citizens do not serve) or who served in the army before the law's enactment are unlikely to provide this information.<sup>55</sup> Such matters will be left to the discretion of those left behind unless the deceased left a similar form. In cases of disputes, the courts will have to decide.<sup>56</sup>

According to Gilbar and Ram-Tiktin, the new arrangement will weigh toward parents' requests to use their dead son's sperm because soldiers will likely cater to their current nuclear family's wishes.<sup>57</sup> For teenagers, respect for their parents' wishes will likely outweigh the potential wish of a hypothetical life partner. According to them, viewing posthumous sperm use as a practice based on solidarity within the family may be the natural, and potentially even the desirable, path to take. Between individuals within a family, bonds of commitment create solidarity manifested in obligations toward others, where each side is willing to defer to what he views as the best interests of the other side.<sup>58</sup> Gilbar and Ram-Tiktin, therefore, support formal legal recognition to allow courts to grant parents their requests explicitly and facilitate arrangements by avoiding legal complexities and emotional considerations.<sup>59</sup> Recognizing the wishes of grieving parents to use their son's sperm through legal means not only respects the internal solidarity of families, potentially offering relief to the mourner in processing the loss, but also benefits the parents by affirming and validating the inherent capabilities and value of individuals within the national community.<sup>60</sup> It aligns with principles like liberty, dignity, and justice and strengthens solidarity within society as a whole.<sup>61</sup> Denying a request by the deceased's parents may inflict moral injury by disregarding the significance of their desire and the constitutive value of their role in the community.

### *B. Posthumous sperm use and national pain*

Gilbar and Ram-Tiktin's understanding of solidarity addresses the family realm, but this paper argues that interestingly, the solidarity framework may be true both to the perspective of the deceased within his family and to the perspective of policymakers towards the alleviation of the national sentiment of grief after the October 7th attack. Amidst this shared identity, national solidarity grows out of a sense of historical memory of past struggles and tradition and finds its expression in the commitment to the nation and its common future.<sup>62</sup> Individuals are not isolated units. Patriotism feeds on the gratitude felt when one recognizes the service and contributions that others have made to one's life.<sup>63</sup> Throughout history, bold endeavors demanding sacrifice have drawn support from moral emotions tied to the nation and its past.<sup>64</sup> In the state of Israel, intimately acquainted with the anguish of loss, choices and actions in the wake of a shared national attack create a sentiment of support due to the sacrifices individuals make for fellow nationals.<sup>65</sup> The sacrifice of soldiers who are part of the same army where most Israeli citizens have served or will serve underscores the profound connection between national identity and the sacrifices made in its defense, a poignant expression of both national solidarity and individual legacy. Imagine the gratitude the entire world felt towards health professionals during COVID-19 and multiply it. The sentiment towards a soldier who runs between bullets is even stronger than towards dedicated health personnel during a pandemic. In a reality where Israelis share a common experience in having to risk their lives to protect the country, posthumous sperm use from fallen soldiers who fell while defending the country has added value. It transcends mere personal tragedy and becomes a national loss, closely related to national bereavement, demanding comprehensive state assistance.

National solidarity fosters empathy for those enduring immense suffering, particularly the families of fallen soldiers. Shared experiences and common goals often lead people to feel morally obligated to assist bereaved families, making permissive regulations around posthumous sperm use appear ethically justifiable, almost obvious. Many members of the public express a desire to offer those who have suffered such profound loss hope for the future.<sup>66</sup> The relationship between military service and societal responsibility reveals the nuanced ethical considerations surrounding posthumous reproduction in Israel. It is hard not to empathize with grieving families who have lost sons that served and protected "us," the people. The idea that society might have a responsibility to offer

these parents the opportunity to use their son's sperm underscores how closely military service and collective ethical frameworks are intertwined and can influence not only individual decisions but also broader ethical considerations within the nation.

Families, particularly those of deceased soldiers, often invoke solidarity, arguing that since they fulfill the moral obligation to send their children to serve, and having sacrificed them for the nation's cause, the country should, in turn, honor their request to use their son's sperm.<sup>67</sup> Thus, particularly when the deceased was a soldier, parents expect that the country will acknowledge their right to use their son's sperm to produce a grandchild.<sup>68</sup> In a notable example from

nal families will play an active and supportive role in the child's life.<sup>74</sup>

Policymakers emphasize the importance of birth for the people of Israel, the country's responsibility to allow the use of advanced technologies for the continuation of the deceased's family line, and the country's moral duty to its soldiers.<sup>75</sup> See, for example, Revital Swid, a past member of the parliament who worked on the pending bill, reflecting clearly the national support, saying "The IDF soldiers and the bereaved families are a consensus, the public says that whoever sends his son to fight for the country is entitled to continuity as part of the compensation and dealing with the loss, so it is easy to start with them [these families, S.B.]."<sup>76</sup> This

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the early 2000s, a bereaved father addressed members of the Israeli Knesset's Science and Technology Committee, urging them to allow parents of soldiers to request posthumous sperm extraction. He framed this as a reciprocal gesture, stating that parents "give their children to the country" and, as such, deserve recognition for their sacrifice.<sup>69</sup> For these families, the birth of a child represents not only part of their emotional recovery but also, in an informal sense, acknowledgment by the nation of the loss they have endured.<sup>70</sup> Denial of such requests can feel unjust to these families, who argue that if the country entrusts them with sending their sons to fight, it should also trust them with decisions about posthumous reproduction. As one bereaved parent expressed, "It is very sad that after giving a child to the country, the country is also the one who decides on his sperm"<sup>71</sup>

Similarly, women seeking to conceive using a deceased man's sperm, especially if he was a soldier, may be motivated by the desire to bring comfort to the bereaved family while fulfilling their own personal dream of parenthood.<sup>72</sup> This option allows them to avoid the challenges associated with anonymous sperm donation, which is otherwise the standard in Israeli policy.<sup>73</sup> In this case, the child will have a known father figure, and both the paternal and mater-

perspective, which suggests that the country may have a responsibility to the parents of fallen soldiers due to mandatory military service, reflects the unique nature of Israeli bioethics shaped by its socio-political context.

### Conclusion

The ongoing war following the tragic events of October 7, the cruelest attacks against Jews since the Holocaust, appears poised to determine the direction of the Israeli ethical discourse surrounding posthumous sperm use. National bereavement, solidarity, and shared pain further reinforce the socio-political narrative that encourages childbirth. This moves the core discussion in a particular direction that, frankly, might have been determined even before the current war, given the extreme pro-natalist Israeli approach. The shock in response to the surprising brutal terrorist attack, heroic actions of sacrifice to protect others, and the following national pain can be seen as building blocks for solidarity, making it morally challenging to deny parents the opportunity to preserve their sons' sperm when facing their requests. Amidst wartime conditions, the availability and promotion of reproductive technology that enables posthumous sperm retrieval within a social environment supportive of continuity primarily translates into the right to genetic continuity and exerts social pressure to utilize

this option as part of mourning customs and coping mechanisms. This right may not align with the wish of the deceased or their partner.

While at the moment sperm is being preserved, ongoing ethical questions of use await resolution until courts are faced with requests to approve the use. Concerns persist that vital questions about loss might be overshadowed by the emphasis on reproductive solutions as a means of comforting the bereaved or of “paying off the social debt,” potentially diminishing the broader discourse surrounding the value of life and collective commemoration.<sup>77</sup> An important implication to discuss is the partner’s status. According to the current guidelines, cases of disagreement between the partner and the deceased’s parents require court approval.<sup>78</sup> When the new bill passes, adding a legal status of parents to request sperm preservation independently from the partner weakens the partner’s position vis-à-vis the deceased’s parents because she loses her superior status in case of a disagreement. Her options are either to make the reproductive choice to honor or commemorate the deceased by using the sperm as his parents wish, or to allow the parents to use another woman to birth a child from her late husband’s sperm. Some widows opposed the idea of a stranger having a child with the sperm of their late husband, seeing it as an insult for their husband to have a child they did not bear.<sup>79</sup> Moreover, according to the new bill, if the partner has a new spouse, she loses her status and cannot use the sperm of her deceased spouse for procreation (section 8(c)(2)).

“Isha L’Isha,” a feminist center, suggests a cautionary approach, stating that “let the dead rest in peace” can be interpreted as directed toward the bereaved parents but can also be read as directed toward society, defining the boundaries of collective responsibility for the living and for the dead.<sup>80</sup> Dr. Etti Samama, the Health Ministry’s chief for medical technology policy, says that “sperm preservation isn’t just something that’s ‘good to have.’”<sup>81</sup> The technology has a dramatic effect on the grieving and we should ensure that families and Israeli society as a whole are ready to deal with it. Public discourse should at least discuss the implications.

#### Disclosures

The author reports no relevant disclosures.

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